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To: [Kent Smith](#)
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Legal Update

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Bradley & Gmelich Lawyers



CALIFORNIA BUSINESSES CANNOT DRAFT A RELEASE TO ABSOLVE THEMSELVES OF GROSS NEGLIGENCE

By Daniel R. Stevens, Esq.

In *Jimenez v. 24 Hour Fitness USA, Inc.* (published on June 9, 2015) the Appellate Court held that a gym's release that attempted to absolve itself from its own gross negligence violated public policy and was therefore unenforceable. This ruling is important to any business that requires persons to execute releases of liability.

Plaintiff, Etelvina Jimenez, who exclusively spoke Spanish, joined a 24 Hour Fitness, and as part of her membership executed a release of liability for any and all injuries occurring at the gym. However, she could not read or understand the release, and no one attempted to translate it for her. Rather, through physical gestures of a gym employee and plaintiff's understanding of the dollar amount which was universal in English and Spanish, plaintiff understood that if she paid the amount indicated, she could use the gym. While plaintiff was using a treadmill, she fell backward and hit her head on another piece of gym equipment that was located less than 6 feet away, resulting in a severe head injury. Plaintiff and her husband sued 24 Hour Fitness alleging that 24 Hour Fitness was grossly negligent in setting up the treadmill because it did do so in a way that violated the treadmill manufacturer's safety instructions.

At the trial court level, 24 Hour Fitness moved for summary judgment (a method of dismissing the action before trial), relying on the release that plaintiff signed when she originally joined the gym. 24 Hour Fitness argued that the release absolved it from liability in all situations, including whether the member was injured while exercising or not. Plaintiffs opposed the motion, arguing that the release was unenforceable because 24 Hour Fitness was grossly negligent, among other arguments. The trial court granted the motion and dismissed the case.

The Appellate Court reversed, relying on a prior California Supreme Court decision, *City of Santa Barbara v. Superior Court* (2007) 41 Cal. 4th 747, in which the Supreme Court

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Congratulations

Shirley



Shirley R. Sullinger, Esq.



Gary J. Bradley, Esq.

Yet Another Acquisition: Congratulations to our Partner, Shirley R. Sullinger, Esq., and our Of Counsel, Gary J. Bradley, Esq., who successfully represented a private security guard company in a multi-million dollar acquisition in California. Due to the circumstances, time was of the essence and they were able to accomplish this sale transaction in record speed!



We are proud to announce that Bradley & Gmelich has been selected to participate at the 2015 ASIS International 61st Annual Seminar and Exhibits on September 28 - October 1. Bradley & Gmelich's

concluded, on public policy grounds, that a release cannot absolve a party from liability for gross negligence, since gross negligence is an aggravated form of negligence. In California, gross negligence is defined as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct."

The Jimenez decision has wide ranging implications for any business that requires persons to execute a release of liability. A release will likely not protect a business that makes products available for persons to use in violation of the product's recommended use.

daniel_stevens



Daniel R. Stevens, Esq. earned a Bachelor of Business Administration degree with a major in Accounting from the University of Texas at Austin (1999). In 2002, Mr. Stevens earned his Juris Doctor degree from the California Western School of Law, where on several occasions he was on the Dean's List and earned an Academic Achievement award (highest grade in class) for the Legal Internship class.

Mr. Stevens' practice focuses on defending civil litigation matters with a particular emphasis on personal injury defense. His areas of practice include premises liability, products liability, automobile accidents, negligent security, wrongful death and habitability.

His hobbies include coin-collecting, reading non-fiction, shepherding his cats, playing any guitar he can get his hands on and watching his Texas Longhorns.

In The Spotlight

diane_leclerc



We are pleased to introduce Diane Leclerc, litigation secretary to our Partner Jaimee K. Wellerstein, Esq. and Ellen E. Cohen, Esq. Diane began working at Bradley & Gmelich in 2000. In 2005, Bradley & Gmelich gave Diane flowers to celebrate her five year anniversary with the firm and Diane, in return gave her notice. Though we were sad to see her go, she went on to fulfill her passion of opening an archery store. After several years as a store owner, she decided she wanted to return to Bradley & Gmelich and we gladly welcomed her back. She's been hitting bulls eyes for Bradley & Gmelich ever since.

To say archery is a hobby for Diane is an understatement. During a trip to the East coast in 2003, Diane went to a sports convention and saw a woman excelling in archery. She was mesmerized by the sport and became hooked. Over the years she participated in many archery competitions and in 2010 she won the National Archery Championship title. These days, she keeps competing to a minimum but enjoys participating in the sport on a regular basis.

Not only is Diane great at shooting an arrow, but she's just as good as helping those in need. Diane regularly crochets hats and scarves to sell at the Mountain Lakes Arts and

education session is entitled Negligent Security and the Active Shooter. Issues being examined include gaps in the active shooter policy, how to ensure the policy is effectively communicated to staff, how the policy integrates with other operational and security policies and how seemingly insignificant policies actually create a perfect storm of liability. Our attorneys will be joined by some of the nation's foremost security experts who will also be participating as live witnesses. For more information and how to attend this conference, visit <https://securityexpo.asisonline.org/Pages/default.aspx>

PROUD TO BE GIVING

pub krawl pic



Managing partner Barry Bradley and his wife Blanca Bradley participated in Pub Krawl XX - Drink for the Cure, where they (along with 150 of their closest friends) attempted to "krawl" to ten pubs during the course of the day on June 27th in Grosse Pointe, MI. After many months of intense training, they proudly completed nine out of ten pubs where they were able to raise a grand total of \$2,326 for the Susan G. Komen Cancer Research Foundation. Way to go Barry and Blanca!



Crafts Fair where she donates 100% of the proceeds to the National Cancer Society. This year, she plans on crocheting baby blankets and beanie caps which she'll include in baby baskets. Diane also makes and donates magnets for the National Cancer Society's Relay for Life Race where 100% of the proceeds are again donated.

It's hard to imagine Diane having any spare time, but she has just enough to enjoy and cultivate her charming fairy garden. Her fairy garden which includes a city, flowers and a pond with fish and turtles, bring her so much joy and relaxation. "Building a fairy garden leaves room in the garden for fairies to dance," says Diane with a smile on her face.

As lucky as we are to have Diane working for us, we're just as lucky that her daughter Kristina, works for Bradley & Gmelich as well. Kristina began working as a file clerk in 2010 and is now our lead Records Supervisor where she manages our file Support Team. Clearly, the apple doesn't fall far from the tree.

Thank you for your hard work and dedication Diane!

Upcoming MCLE

Amber D. Esposito, Esq. will be presenting this month's MCLE. Her presentation will be entitled, "Update on Reptile Theory and Counter Attack Methods."

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Bradley & Gmelich, Lawyers



700 N. Brand Blvd.
10th Floor
Glendale, CA 91203
www.bglawyers.com

Tel: (818) 243-5200
Fax: (818) 243-5266
info@bglawyers.com

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Bradley & Gmelich
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10th Floor
Glendale, California 91203
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